

### **III. REMARKS/ARGUMENTS**

#### **A. Status of the Claims**

Claims 1-3, 5-19, 27-29 and 31-41 are pending. Claims 4, 20-26, 30, and 42-46 have been previously cancelled. Applicants respectfully request reconsideration of the rejections of these claims for at least the following reasons.

#### **B. Claim Rejections Under 35 U.S.C. § 102(e)**

Claims 1, 2, 5-12, 17-19, 27, 28, 31-35 and 39-41 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Publication No. 2002/0129221 to Borgia *et al.* (the “Borgia Published Application”). Specifically, the Office Action alleges that the Borgia Published Application discloses all elements of these claims. This rejection is hereby respectfully traversed.

Applicants submit that the Borgia Published Application is not proper prior art because at least the portions of Borgia Published Application relied upon in the Office Action were invented by inventors Jodi (formerly Miller) Breslin, Evelyn Borgia, and Graham De Gottal. According to the MPEP,

When subject matter, disclosed but not claimed in a patent or application publication filed jointly by S and another, is claimed in a later application filed by S, the joint patent or application publication is a valid reference under 35 U.S.C. 102(a) or (e) unless overcome by affidavit or declaration under 37 CFR 1.131 or an unequivocal declaration under 37 CFR 1.132 by S that he/she conceived or invented the subject matter disclosed in the patent or application publication and relied on in the rejection.

MPEP 715.01(a) (citing *In re DeBaun*, 687 F.2d 459 (CCPA 1982); *see also* MPEP 2136.05 (“when the unclaimed subject matter of a reference is applicant’s own invention, applicant may overcome a prima facie case based on the patent, U.S. patent application publication, or international application publication, by showing that the disclosure is a description of applicant’s own previous work”).

Inventors Miller, Borgia, and De Gottal have each submitted declarations stating that they are co-inventors of the present invention, and that they are also co-inventors of the subject matter disclosed in the Borgia Published Application and relied upon in the Office Action. *See* Declaration Of Jodi Breslin Under 37 C.F.R. § 1.131; Declaration Of Evelyn Borgia Under 37 C.F.R. § 1.131; and Declaration Of Graham de Gottal Under 37 C.F.R. § 1.131. Therefore, as the Borgia Published Application is not prior art, this rejection is now moot.

**C. Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 3 and 29 stand rejected as allegedly rendered obvious by the Borgia Published Application in view of U.S. Patent Publication No. 2004/0103431 to Davenport *et al.* Further, claims 13-16 and 36-38 stand rejected as allegedly rendered obvious by the Borgia Published Application in view of U.S. Patent No. 5,185,697 to Jacobs *et al.* These rejections are respectfully traversed.

As set forth above, the Borgia Published Application is not proper prior art to the claims of the present application. In view of this, Applicants respectfully request that this rejection be withdrawn.

**IV. CONCLUSION**


In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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